IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/01/2005

CORAM

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

W.A.No.4059 of 2004 and W.A.No. 4060 of 2004
and
WAMP.Nos.7648 & 7649 of 200

and

W.P.Nos.30650, 27332, 24209, 24210, 25652, 25653,
33824 to 33834, 33850 to 33858, 33866 to 33874, 30980, 32989, 34136,
34514, 28281, 27358, 24523, 24248, 25377,
26148 to 26153, 26906, 26907, 28799, 33557, 33558,
34528, 32210, 35771 & 36883 of 2004
and
W.P.M.P.Nos.37136, 33250, 29392, 29394, 31173, 31175, 40904 to 40914,
40936 to 40944, 40956 to 40964, 37542, 41640, 34339, 33281, 39906,
41267, 29799, 29447, 30851, 31780, 31782, 31784, 31786, 31788,
31790, 32770 to 32773, 34989, 40555, 41654 and 39007, 44258 & 43059 of 2004

W.A.No.4059 of 2004:

I.Saraswathi. ... Appellant.

-Vs-

1.The State of Tamil Nadu, rep.
By its Secretary to Govt.,
Education Department,
Fort St. George,
Chennai.

2.The Principal,
Ragas Dental College and Hospital,
No.2/102, East Coast Road,
Uthandi, Chennai 600 119. ... Respondents.

W.A.No.4060 of 2004

1.Deepta Ramarao
2.R.J.Rajalakshmi
3.Shubhakara,L
4.S.K.Gayathri

5.Ramya,D.
6.S.Dhanalakshmi
7.E.Sandhiyaa
8.M.Deivanayagi
9.U.Durga
10.V.sangeetha
11.Kapil Dev Kumar,S.
12.T.T.Kathikeyan
13.E.P.Kailash Nath
14.G.Yvaraja
15.M.Premkumar
16.R.Antonette Rhea
17.S.Subha
18.T.Anitha
19.G.Devi Rathna
20.S.Nasreen
21.V.Subashini
22.a.M.Ramhya
23.S.Menagapriyatharshini
24.S.Karthikeyan
25.M.Ganesh Kumar
26.M.M.Ramya Devi
27.A.Sasi Rekha
28.J.Gifrina
29.C.Indumathi ... Appellants.

vs.

2.The State of Tamil Nadu, rep.
By its Secretary to Govt.,
Education Department,
Fort St. George,
Chennai.

3.The Principal,
Ragas Dental College and Hospital,
No.2/102, East Coast Road,
Uthandi, Chennai 600 119. ... Respondents.

W.A.No.4059 of 2004 filed against the order in WP.M.P.No.39906 of 20
04 in W.P.No.32989 of 2004 dated 24.11.2004.
W.A.No.4060 of 2004 filed against the order in WP.M.P.No.41267 of 20
04 in W.P.No.34136 of 2004 dated 24.11.2004.

W.P.No.30650 of 2004

Ragas Dental College and Hospital
rep. By its Secretary,
2/102, East Coast Road,
Uthandi, Chennai 600 119. ... Petitioner.

-Vs-

1.The Government of Tamil Nadu,
rep. By its Secretary,
Health and Family Welfare Department,
Chennai 600 009.

2.Committee for fixation of fee in unaided
private professional educational institutions
(minority and non-minority), rep. By its
Member-Secretary, Greenways Road, Chennai 600 028.

3.The Additional Director of Medical Education/
Secretary, Selection Committee,
Directorate of Medical Education,
Chennai 600 010.

4.The Tamilnadu Dr.M.G.R.Medical University,
Chennai, rep. By its Registrar,
Chennai. ... Respondents.

W.P. filed for the issue of a writ of Certiorarified Mandamus as
stated therein.

W.A.Nos.4059 & 4060 of 2004

!Mrs. Nalini Chidambaram Sr.
Counsel for M/s.Gladys Daniel ... for appellant.

^Mr.R.Krishnamoorthy,
Sr. Counsel for M/s.Muthumani Doraisamy ...for 2nd respondent.
Mr.V.Raghupathy, Govt. Pleader for R1.

W.P.Nos.30650 and 27332 of 2004

Mr.R.Krishnamoorthy,
Sr.counsel for Mr.Kandavadivel Doraisamy ... for petitioner.

Mr.A.L.Somayaji, Addl.Advocate General/
Sr. Counsel for Mr.V. Raghupathy, Govt. Pleader ... for R1 and R3.

Mr.Vellaisamy ...for R4.

W.P.Nos.24209, 24210, 24652, 24653, 24523, 24248, 25377, 26148 to 261 53,
26906, 26907, 28799 and 32210 of 2004:

Mr.R.Krishnamoorthy, Sr. Counsel for Mr.V.Ayyadurai ... for petitioner

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy,

Govt. Pleader ... for R1.

Mr.G.Masilamani, Sr. Counsel for M/s.G.M.Mani Associates .. for R2.

W.P.Nos.33824 to 33834, 33850 to 33858 and 33866 to 33874 of 2004:

Mr.K.Chandrasekaran ... for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1 & R4

Mr.Vijay Narayan, Sr. Counsel ...for R2.

Mr.Vellaisamy ...for R3.

Mr.G.Masilamani, Sr. Counsel for M/s.G.M.Mani Associates ... for R5.

W.P.No.30980 of 2004:

Mr.G.R.Swaminathan ... for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1 & R3

Mr.Vellaisamy ...for R4.

W.P.Nos.32989 & 34136 of 2004:

Mrs.Nalini Chidambaram, Sr. Counsel for M/s.Gladys Daniel ... for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1

W.P.No.33557 & 33558 of 2004:

Mr.P.V.S.Giridhar for M/s.P.V.S.Giridhar Associates ...for petitioner.

Mr.Vijay Narayan, Sr. Counsel ... for R1 & R5.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R2

Mr.Vellaisamy ... for R3.

W.P.No.34528 of 2004:

Mr.R.Krishnamoorthy, Sr. Counsel for Mr.Kandavadivel Doraisamy ...

for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1 & R3

Mr.G.Masilamani, Sr. Counsel for M/s.G.M.Mani Associates ... for R4.

W.P.Nos.34514 and 27358 of 2004:

Mr.R.Krishnamoorthy, Sr. Counsel for Mr.Kandavadivel Doraisamy ... for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1 & R3

Mr.Vellaisamy ... for R4.

W.P.No.28281 of 2004:

Mr.R.Krishnamoorthy, Sr. Counsel for Mr.Kandavadivel Doraisamy ... for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1 & R3

Mr.G.Masilamani, Sr. Counsel for M/s.G.M.Mani Associates ... for R4.

W.P.No.36883 of 2004:

Mrs.Nalini Chidambaram, Sr. Counsel for M/s.Gladys Daniel ...for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1

Mr.R.Krishnamoorthy, Sr. Counsel for Mr.Kandavadivel Doraisami ... for R2.

W.P.No.35771 of 2004:

Mrs.Nalini Chidambaram, Sr. Counsel for M/s.Gladys Daniel ...for petitioner.

Mr.A.L.Somayaji, Sr. Counsel/Addl. Advocate General for Mr.V. Raghupathy, Govt. Pleader ... for R1

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

The common point that arises in this batch of cases, some of them being writ petitions filed by the management of self-financing professional

colleges, some being writ petitions filed by the students and some being writ appeals preferred against interim orders passed by a learned Judge of this Court, is the validity of the order of the Permanent Committee for the Fixation of Fee for private professional educational institutions in the State of Tamil Nadu fixing the fees payable by the students in respect of self-financing professional colleges of medicines, health science, para-medical courses like, M.B.B. S., B.D.S., M.D.S., etc. We heard all the matters together.

2. Since the points that arise in the cases are common, it will be convenient to refer to the averments made in one or two writ petitions filed by the colleges and the averments made in some of the writ petitions filed by the students.

3. W.P.No.30650 of 2004 is filed by Ragas Dental College and Hospital and the petition has been filed for the issue of a writ of Certiorarified Mandamus calling for the records in Proceedings No.SFPC/PC on the file of the Permanent Committee for Fixation of Fee for Private Professional Educational Institutions dated 13.8.2004 and quash the same. The main ground of challenge is that the Permanent Committee, while fixing the fee structure, has failed to take note of the relevant factors as indicated by the Supreme Court in ISLAMIC ACADEMY OF EDUCATION V. STATE OF KARNATAKA (2003) 6 SCC 697 □ hereinafter referred to as Islamic Academy case) and the Permanent Committee was not correct in fixing the fee for all the colleges at a uniform rate in spite of the fact that each and every institution had made claim based on infrastructure, facilities and amenities available in the individual institution. It is the case of the management that the Permanent Committee acted beyond the directions of the Supreme Court in Islamic Academy case. It is stated that though the petitioner supplied materials, but the Permanent Committee has not observed the principles of natural justice by giving a reasonable opportunity to the institution to represent its case. It is the case of the management that the representations submitted along with supporting materials were not considered by the Permanent Committee and the Permanent Committee failed to adhere to the directions of the Supreme Court in the matter of fixation of fee structure. The petitioner referred to the location of the institution and its advantages and the salary payable and paid to the teaching and non-teaching staff as per the UGC norms. It is stated that the management of the self-financing colleges are not treating the students allotted under the Government seats on par with the students admitted by the management and hence, for the grounds raised in the writ petition, it is prayed that the order of the Permanent Committee should be quashed.

4. In another writ petition filed by one of the colleges (W.P.No.3452 8 of 2004), it is stated that the petitioner college has submitted representation before the Permanent Committee along with material particulars which are necessary to fix the fee in respect of the petitioner institution for different courses in B.E. The ground of challenge is that the fee structure has to be fixed depending upon the available infrastructure and other amenities on the basis of cost plus method of a particular institution and there is no scope for uniform fees. According to the petitioner, the

Permanent Committee has not taken into account the relevant factors as directed by the Supreme Court, but fixed the fee structure mechanically. It is stated that there is violation of the principles of natural justice and violation of fundamental rights. It is stated that the Permanent Committee has not taken into consideration the directions of the Supreme Court in Islamic Academy case. It is further stated that the petitioner college has got many development schemes and is estimated to provide further amenities which require fixation of enhanced fee. Hence, it is prayed that the order of the Permanent Committee should be quashed.

5. As far as writ petitions filed by the students are concerned, we take up W.P.No.33824 of 2004. It is the case of the petitioner in W. P.No.33824 of 2004 that the fifth respondent therein, namely, Meenakshi Medical College is granted the status of Deemed University. This would have no effect in so far as the petitioner and other similarly placed students as they have been admitted in the academic year 2003-04 and the recommendation of Raman Committee is very much applicable to them and UGC has also fixed for the academic year 2004-05 the fees for MBBS at Rs.1,30,000/- and it is not open to the college to collect fees more than what is fixed by the Permanent Committee. It is also stated that the fees collected for the academic year 2003-04 is excessive when compared to the fee structure for the academic years 2004-05 to 2006-7 fixed at Rs.1,30,000/- and hence, the excess fee collected for the academic year 2003-04 is illegal and the college is bound to refund the excess fees collected. It is therefore prayed for the issue of a writ of declaration to declare that the petitioner is liable to pay only a sum of Rs.1,30,000/- from the academic year 2004-05 to 2006-07 as fees inclusive of annual fees and other fees like, admission fees, tuition fees, special fees, laboratory/computer fees, internet fees, library fees, sports fees, placement and training fees, development fees, maintenance and amenities fees, extra-curriculum activities fees and other recurring expenses to the college and consequently direct the institution to collect only the said fee from the academic year 2004-05 to 2006-07 and refund the excess fees collected from the student for the academic year 2003-04.

6. In one another writ petition filed by a student in W.P.No.32989 of 2004, the petitioner has referred to the decision of the Supreme Court in Islamic Academy case and the report of the Committee. It is stated that the college, the second respondent in the writ petition, commenced the second year BDS course even before the announcement of results for the first year and the students were asked to pay a sum of Rs.1,60,000/- immediately and the students sent a written representation to the college stating that they are obliged to pay only the fees fixed by the Committee, but however, on 10.11.2004 it was informed by the college by an undated letter that the second year students should pay Rs.1,59,000/- in two instalments without giving the details regarding the writ petition filed and interim orders obtained from this Court. The petitioner referred to the representation made by the students to the Government dated 11.11.2004 requesting the Government to direct the college to comply with the order of the Supreme Court in Islamic Academy case. It is stated that in the writ petition filed by the college, the students have not been impleaded as parties. It is stated that the students who joined the BDS course in the year 2 002-03 are paying only Rs.50,000/- as annual fee and the

students who joined the course in the year 2004-05 are paying only Rs.75,000/and hence, it is unreasonable to direct the students who joined the course in 2003-04 to pay Rs.1,60,000/- as fees. It is stated that the students who joined in the year 2003-04 are being singled out for discriminatory treatment. Hence, the writ petition has been filed for the issue of a writ of Mandamus to comply with the order of the Supreme Court in Islamic Academy case in the matter of fee structure for BDS course in so far as the petitioner is concerned.

7. In another writ petition filed by some of the students in W.P.No.30980 of 2004, the respondent college is a dental college. The writ petition has been filed to direct the college to retain the fee of Rs.75,000/- for the first year B.D.S. course for the academic year 2004 -05 as fixed by the Committee. The averments made in the writ petition are also similar to the other writ petitions filed by the students.

8. In another writ petition, W.P.No.33557 of 2004 the students are challenging the demand of Rs.2,50,000/- as tuition fees for B.D.S. course for the academic year 2004-05 in the fourth respondent college. It is stated that even assuming without admitting that in view of the Deemed University status conferred upon the college for the year 200 4-05, the college would be entitled to collect a fee of Rs.1,00,000/- as fixed by the UGC, the fee for the first and second year would aggregate only to Rs.1,55,000/-. Hence, the petition has been filed for the issue of a writ of Mandamus to forbear the college from collecting any tuition fee higher than that fixed either by the State Government or by the UGC in respect of B.D.S. course and to direct the college to adjust the surplus amount collected from the petitioner/ students in the year first year of B.D.S. course towards the fees payable by them for the subsequent years.

9. Though a number of writ petitions have been filed, we have gone through the same and the points raised in all the petitioners are more or less similar.

10. Mr.R.Krishnamoorthy, learned senior counsel appearing for the management of some of self-financing colleges referred to the details of the writ petitions filed by the colleges as well as by the students and the background of the case. He submitted that the Permanent Committee by fixing a uniform annual fees of Rs.75,000/- for all dental colleges has overstepped its jurisdiction. His main submission was that the Permanent Committee has to approve the proposal submitted by "each institution" taking into account various factors including the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion, etc. He submitted that "each institution" has the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students and the institution must also be able to generate surplus which must be used for the betterment and growth of the institution. He referred to the Islamic Academy Case and submitted that the Committee has not taken into consideration the various directions given by the Supreme Court in Islamic Academy case and hence, the order of the Permanent Committee suffers from

various legal infirmities. He also submitted that there is violation of the principles of natural justice as no opportunity was granted to the institution before the order proposing the fixation of fee structure was passed. He also submitted that there is violation of fundamental rights and there is no indication in the order of the Permanent Committee that the fees proposed by the college are fixed to make profiteering and the college is charging capitation fees. He therefore submitted that relevant factors have not been taken into consideration like, infrastructure, facilities available, investment made, salaries paid to the teachers and staff, etc. and hence, the order of the Permanent Committee is liable to be set aside. He also submitted that in so far as the students who were admitted in B.D.S. Course in the academic year 2003-04 and 2004-05 are concerned, the judgment in T.M.A.Pai Foundation v. State of Karnataka (2002) 8 SCC 481 □ T.M.A.Pai Foundation case) would govern and the fee structure fixed by the management is subject to the result of the writ petition. In so far as 3rd and 4th year students in B.D.S. Course who were admitted in the year 2002 are concerned, the fees had already been fixed and hence, the students are not entitled to claim refund or even to claim adjustment of the same. His foremost submission is that the Permanent Committee has failed to fix the fees for each institution, but merely fixed a uniform fee structure. He also submitted that the method adopted by the Permanent Committee in fixing the fee structure is not correct. He submitted that the fee fixed is inequitable and there are no materials at all to sustain the reasonings of the Permanent Committee. He submitted that the Permanent Committee has failed to consider the fact that MBA, MCA courses are taught in self-financing engineering colleges as also in the Arts colleges affiliated to various Universities in Tamil Nadu and fixing of uniform fee for all the institutions at the same rate would run contrary to the directions of the Supreme Court in Islamic Academy case.

11. It is also useful to refer to the arguments of Mr.G.Masilamani, learned senior counsel appearing for Meenakshi Ammal Dental College and Meenakshi Medical College. His main submission was that on the basis of the decision of the Supreme Court in T.M.A.Pai Foundation case, which was clarified in Islamic Academy case a rigid, uniform fee structure cannot be fixed and "each institution" must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. He also submitted that in so far as Meenakshi Medical College is concerned, taking into account the circumstances, the fee was fixed at Rs.3,95,000/- and the college is a Deemed University and the Government cannot interfere with the right of fixation of fee by the University and the college is justified and within its right to fix the fee of Rs.3,95,000/- per student. He also referred to the Income and Expenditure Account, the Balance Sheet and other particulars furnished to the Permanent Committee and submitted that the fee of Rs.3,95,000/- fixed for the Medical College is reasonable.

12. Mr.A.L.Somayaji, learned senior counsel/Additional Advocate General appearing for the Government submitted that there is no violation of the principles of natural justice as the Permanent Committee gave ample opportunity to all the colleges to make representation, but the colleges did not avail the opportunity. Mr.A.L.Somayaji, learned Additional Advocate

General also submitted that the Permanent Committee has taken into consideration all the relevant factors and the directions of the Supreme Court in Islamic Academy case and no case has been made out to interfere with the orders of the Permanent Committee.

13. Mrs.Nalini Chidambaram, learned senior counsel appearing on behalf of some of the students referred to the decision in T.M.A.Pai Foundation case as well as Islamic Academy Case and submitted that fee has been fixed by the Committee and the demand for higher fee by the self-financing professional colleges is not legal and the colleges are to adhere to the fee structure fixed by the Committee. She also submitted that the fee of Rs.1,59,000/fixed and collected from the students of BDS course is exorbitant. She submitted that the Supreme Court has referred to a larger Bench for reconsideration of some points that arise out of the decisions in T.M.A.Pai Foundation case and Islamic Academy Case, particularly the fees payable by the students and hence, no reliance can be placed on the judgment in Islamic Academy case. Learned senior counsel also submitted that the Supreme Court has also passed interim orders to the effect that pending reconsideration of the decisions, the fee fixed by the Experts Committee should be charged. She also submitted that the fee fixed by the Committee is effective from the academic year 2003-04 and the excessive fees collected from the students during the academic year 2003-04 should be adjusted against the fees to be collected for the subsequent academic years as the students have paid the fees for the year 2003-04 subject to fixation of fees by the Committee.

14. Mr.K.Chandrasekaran, learned counsel appearing for some of the students submitted that the students are merit students and the seats have been allotted by the Director of Medical Education in Meenakshi Medical College. He submitted that they are all allotted under merit quota and they should be charged the fees as fixed by the Government for Government colleges. His alternative plea is that the fee collected by the college is exorbitant and he produced before the Court a tabular column showing that exorbitant fee was collected by the college. He also submitted that the Committee has taken into consideration all the aspects as held by the Supreme Court in Islamic Academy case. His submission was that this Court is not an appellate authority sitting over the fees fixed by the Committee. He also submitted that there is no violation of the principles of natural justice. He submitted that though the college declared to be a Deemed University coming under the control of UGC, the students admitted in the academic year 2003-04 continue to be the students of Dr.MGR University and the UGC fixed Rs.1.30 lakhs per year for the students of the academic year 2004-05. He submitted that the students of the year 2004-05 are required to pay Rs.1.30 lakhs per year, while the students of the year 20 03-04 are required to pay a sum of Rs.4.49 lakhs. He submitted that the excess fees paid by the students should be kept in Fixed Deposit and should be adjusted towards future fees as per the judgment in Islamic Academy case. After the conclusion of hearing, learned counsel also submitted that the students are asked to vacate the hostel and they are not allowed to take up the examinations also.

15. Mr.P.V.S.Giridhar, learned counsel appearing for some of the students submitted that Rs.2,50,000/- collected from the students of BDS course is not

legal. He also submitted that the college is affiliated to Dr.MGR Medical University in so far as the students of the year 2003-04 are concerned and the Directorate of Medical Education for B.D.S. Course fixed only a sum of Rs.55,000/- for the academic year 20 03-04, but there was a demand from the students to pay a sum of Rs.2,50,000/- for the second year. He therefore submitted that the demand of Rs.2,50,000/- is illegal as the college continues to be affiliated to Dr.MGR Medical University in so far as the students of the year 2003-04 are concerned and even assuming the college has been conferred the Deemed University status, the maximum fee that it can charge is Rs.1,00,000/- as determined by the UGC for BDS course. He therefore submitted that since the students are required to pay only Rs.55,000 /- per year, the excess amount collected which is lying in the college should be adjusted against the future fee to be collected from the students. He submitted that the demand of the college from the students of second year for payment of Rs.2,50,000/- for the academic year 2004-05 is illegal as it is exorbitant, arbitrary and against the judgment of the Supreme Court in Islamic Academy case. He also submitted that under section 7 of the provisions of the Tamil

Nadu Educational Institutions (Prohibition of collection of Capitation Fee) Act, 1992, if the college is charging a fee more than the sum prescribed by the Permanent Committee, the college is liable to be penalized.

16. We have carefully considered the submissions of learned senior counsel as well as learned counsel for the parties. In so far as the submission that there is violation of the principles of natural justice is concerned, we find that the State Government had constituted a Permanent Committee for the Fixation of Fee for Private Professional Educational Institutions and on the constitution of the Committee, the Committee issued notice to all the colleges and some of the colleges sent their representations with accounts. It is seen from the proceedings of the Committee dated 13.8.2004 that Mr.T.D.Naidu appeared before the Committee representing All India Medical and Engineering College Association and requested time to submit a representation on behalf of the said Association and accordingly, the time was granted, but he did not choose to appear before the Committee again as promised, nor has submitted any representation. The Committee has also reported that it heard the oral representations of three Dental colleges, namely, Saveetha Dental College, Ragas Dental College and Rajas Dental College and P.S.G. College of Medicine, and the Committee also heard the representatives of the Post Graduate Students (Dental Courses) from the above three Dental Colleges. The proceedings of the Committee make it clear that the Committee gave ample opportunity and issued notice to all the concerned colleges and the colleges also made representations and Mr.T.D.Naidu also appeared before the Committee on behalf of All India Medical and Engineering College Association who made a request for grant of time to submit a representation, but did not choose to appear before the Committee thereafter. It is apparent that the All India Medical and Engineering College Association did not avail the opportunity granted to it by the Permanent Committee and we hold that the order of the Committee is not liable to be set aside on the ground of violation of the principles of natural justice.

17. The main allegation made on behalf of the colleges is that the Committee has not taken into account the relevant factors as directed by the Supreme Court in Islamic Academy case. Mr.R.Krishnamoorthy, learned senior counsel appearing for some of the colleges referred to paragraph-6 of the judgment and also other portions of the judgment so far as it considers the question No.1 posed before it, namely, whether the educational institutions are entitled to fix their own fee structure. The Supreme Court, in answering the said question, held as under:-

" 7. So far as the first question is concerned, in our view the majority judgment is very clear. There an be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in T.M.A.Pai case (T.M. A.Pai Foundation v. State of Karnataka, (2002 8 SCC 481) the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by

the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly and other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation."

18. We are unable to accept the submission of Mr.R.Krishnamoorthy, learned senior counsel appearing for some of the colleges. It is no doubt true that the Committee is required to fix the fee taking into account the need of each educational institution and the Committee must also take note of the need of the institution to generate funds to run the institution and to provide facilities for the benefit and betterment of students. In other words, the Committee is required to apply its mind to the amount of fees payable in each institution. The Supreme Court held that it is permissible for each institution to generate surplus funds which must be used for the growth of the institution and for the betterment of students and the only embargo that is placed by the Supreme Court is that the fee structure proposed should not be a profit-making one and under the guise of charging fees, there should be no capitation fee charged. It is seen from the order of the Committee that the Committee has considered the number of students admitted in each institution, available facilities alleged to have been provided, infrastructure, promising development and all other allied factors and then, fixed the uniform maximum fee structure for each course. We are of the view, the order of the Committee is not liable to be interfered with only on the ground that the order does not indicate that the fees payable is with reference to each institution. We are of the view, the over all needs of all the institutions and the strength of the students were taken into consideration, and then the Committee fixed the maximum fee structure as prescribed in its order. We are of the view that the Committee is an expert body and it is not expected to write a detailed judgment. We have already noticed that only three colleges have submitted their proposals, and the representative of the All India Medical and Engineering College Association did not choose to appear before the Committee. The Permanent Committee, in the absence of any relevant materials forthcoming from the rest of the colleges or by the Association, has fixed the maximum fees payable by the students. Inso far as three colleges who have submitted their proposals are concerned, there is enough indication in the order of the Committee that it has applied its mind and fixed the fee structure. We are of the view that the mere fixation of a maximum uniform fee for all the colleges covered in its report is not a ground to hold that the Committee has not applied its mind to the relevant question or it has not kept in mind the principles laid down by the Supreme Court in Islamic Academy case. In our view, the above observation of the Supreme Court that e ach institution should have a separate fee structure does not prohibit fixing a 'maximum fee', as has been done by the Committee, to prevent exploitation.

19. No doubt, the Supreme Court in Islamic Academy case has held that the

Permanent Committee should decide whether the fees proposed by an institute are justified and the institute is not charging capitation fees and there is no profiteering in the fees proposed by the institute. However, we are of the view that the Permanent Committee is not in any way precluded from fixing a uniform 'maximum' fee payable by the students of all the institutions concerned, and the fixation of a uniform maximum fee by itself is not a ground to interfere with the orders of the Permanent Committee. In Islamic Academy case, the Supreme Court has cautioned that fees so proposed by an institution should not be in the nature of profiteering or capitation fees. We therefore hold that since the above two criteria are satisfied by the Permanent Committee in fixing a uniform fee for the institutions concerned, the orders of the Permanent Committee cannot be interfered with only on the ground that the Permanent Committee has fixed a uniform fee for all the institutions concerned. Accordingly, we do not find any infirmity in the order of the Committee. Further, it is well settled by series of decisions that in the matter of judicial review, this Court is not sitting in appeal. The Supreme Court in K.VINOD KUMAR V. S.PALANISAMY (2003) 10 SCC 681: AIR 2003 SC 3171) has held that in proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision-making process and does not extend to the merits of the decision taken. Further, we have in RAMA.MUTHURAMALINGAM v. THE DEPUTY SUPERINTENDENT OF POLICE reported in 2004 (5) CTC 554, held that the Court must exercise selfrestraint in matters relating to administration in which the authorities are specialists and the Court which has no expertise in those matters should leave the same to the discretion of the authorities concerned.

20. As far as Engineering Colleges are concerned, the Committee in its order dated 8.6.2004 has found that none of the private engineering colleges has placed before the Committee its proposed fee structure along with relevant documents and books of account as directed by the Supreme Court. Hence, it cannot be stated that there is violation of the principles of natural justice in the order passed by the Committee dated 8.6.2004 fixing the fees for private professional engineering colleges. The Committee in its order has taken into account all relevant factors and considered the report of the experts of Educational Department and then, fixed the fee structure. In the absence of any material placed by the colleges, the colleges cannot complain that the Committee has fixed the fees on its own.

21. As far as the fees fixed for M.B.A. and M.C.A. courses are concerned, the position remains the same as that of engineering colleges as none of them has placed before the Committee its proposal with relevant documents. The Committee looked into the various fees payable by the students joining in M.C.A. and M.B.A. courses and then, fixed the fees on the basis of the report of the Experts Committee in G.O.Ms.No.218, Higher Education dated 24.6.2002. Since no relevant materials were placed before the Committee, the institutions cannot complain now that the fee structure fixed by the Committee is liable to be struck down.

22. We also hold that though Meenakshi Medical College is a Deemed University, it is still affiliated to Dr.M.G.R.University. Though it is stated that Meenakshi Medical College is challenging the fixation of fees by the U.G.C. In W.P.No.35581 of 2004 and it is stated that this Court has also granted interim stay in t hat petition, the said writ petition is not listed

before us. However, since there is already an order of stay, it is not open to the students to claim that they are required to pay the fee fixed by the U.G.C. Equally, the college cannot fix the fee on its own and in the absence of enforceability of the fee fixed by the U.G.C., the college must follow the fee fixed by the Permanent Committee. Though the college claims to be a deemed University, still it is affiliated to Dr.M.G.R. University and it is not open to the college to charge fees on its own. We are of the view, if the college is permitted to fix the fee on its own accord then, it will go against the ratio of the decision of the Supreme Court in Islamic Academy case as the Supreme Court has held that there should not be any profiteering and under the guise of collection of tuition fees, there should not be any capitaiton fees. Therefore, it is impermissible for the said college to fix the fees on its own and it has to adhere to the fee fixed by the Committee as it is stated that the implementation of the fee structure fixed by the U.G.C. is stayed by the orders of this Court. It is also demonstrated before us that the fee charged is quite exorbitant and unreasonable and it cannot be sustained on any standard.

23. As far as the plea of the students that the fees for the academic year 2003-04 should also be on par with the fees prescribed by the Committee and the excess fees collected during the academic year 2003-04 should be adjusted against the future fees payable by the students is concerned, we find from the written submission made on behalf of the management of self-financing dental colleges that,
"it is humbly submitted there is no substance having regard to the fact that the I and II year B.D.S. Course students who have been admitted during 2003-04 & 2004-05 i.e., after T.M.A.Pai's case are governed by the fee structure as proposed by the management subject to the writ petitions pending before this Hon'ble Court. The III & IV year students were admitted during the academic year 2000-02 whose fee structure had already been fixed in consonance with the fee fixed by the then Committee which is in terms of Unnikrishnan's scheme"

We also find that the Supreme Court has delivered the judgment in Islamic Academy case on 14th August, 2003 and the Committee was constituted as per the decision of the Supreme Court in Islamic Academy case by order dated 19.3.2004 and the Committee submitted its reports for engineering courses on 8.6.2004 and for M.B.A. and M.C.A. courses on 23.8.2004 and for medical and dental courses on 13.8.2004. Since it is fairly admitted on behalf of the colleges that the students were admitted during the academic years 2003-04 and 2004-5 subject to the result of the writ petitions pending before this Court, we are of the view that the students would be required to pay only the fees as fixed by the Permanent Committee for the academic years 2003-04 and 200 4-05. We therefore hold that the students who were admitted in the academic year 2003-04 are also required to pay the fees fixed by the Permanent Committee and if any excess payment has been made, the colleges are directed to adjust the same against any other fees payable by the students. The colleges are also directed to keep the balance money paid by the students for the academic year 2003-04 in fixed deposit as directed by the Supreme Court in Islamic Academy case. As far as the students who were admitted in the academic year 2002-03 are concerned, the fees already paid by them need not be adjusted or kept in

fixed deposit, but they are required to pay fees for the academic years 2003-04 and 2004-05 as per the directions of the Permanent Committee. Further, it is made clear that the fee structure fixed for the academic year 2004-05 will be valid not only for the first year, but also for the second year, third year and fourth year courses as the case may be. It is also made clear that the students, whether they are studying in the second year or in subsequent years, are required to pay the fees as prescribed by the Committ ee for the particular academic year and ensuing academic years covered in the report of the Permanent Committee and no more and nothing less.

24. All the writ appeals as well as the writ petitions are disposed of accordingly, with the above directions. No costs. Connected WA.MPs. and WP.M.Ps. are closed.

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1.The Secretary to Govt.,
Education Department,
State of Tamil Nadu,
Fort St. George,
Chennai.

2.The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Chennai 600 009.

3.The Member-Secretary,
Committee for fixation of fee in unaided
private professional educational institutions
(minority and non-minority),
Greenways Road, Chennai 600 028.

4.The Additional Director of Medical Education/
Secretary, Selection Committee,
Directorate of Medical Education,
Chennai 600 010.

5.The Registrar,
Tamilnadu Dr.M.G.R.Medical University,
Chennai.